



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hawk Services, Inc.; A-Bear's Janitorial Service, Inc.

File: B-257299.4; B-257299.5

Date: August 31, 1995

Howell Roger Riggs, Esq., for Hawk Services, Inc., and Royce L. Howard for A-Bear's Janitorial Service, Inc., the protesters.

J. William Bennett, Esq., for Coast Industries, Incorporated, an interested party.

Jeffrey I. Kessler, Esq., and Glenda J. Collins, Esq., Department of the Army, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Selection of a higher-rated, higher-priced offer over an acceptable, lower-priced offer in a best value procurement in which technical factors were stated to be more important than price was reasonable where the contracting officer concluded that the low risk, quality performance presented by the higher-rated offer and the higher performance risks presented by the protester's proposal outweighed the protester's price advantage.

2. Protest that the procuring agency misled the protester in discussions by signaling that the protester's manning levels were too low, which caused the protester to raise its manning levels, is denied where the agency merely requested that the protester provide, as required by the solicitation, explanations for its deviations from the government's stated manning estimates.

DECISION

Hawk Services, Inc. and A-Bear's Janitorial Service, Inc. protest the award of a contract to Coast Industries, Incorporated under request for proposals (RFP) No. DAAH03-94-R-0019, issued by the Department of the Army for base custodial services at Redstone Arsenal, Alabama. Hawk challenges the Army's cost/technical

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tradeoff that resulted in the selection of Coast's proposal for award, and A-Bear's challenges the Army's conduct of discussions.

We deny the protests.¹

The RFP, issued as a total small disadvantaged business set-aside, contemplated the award of a fixed-price, indefinite quantity contract for janitorial and custodial services for 541 buildings, aggregating nearly 68 million square feet, at Redstone Arsenal.² The RFP specified an assortment of classes of services that could be ordered, with each class of service requiring a different frequency of service and level of effort. For example, class "G" requires primary services only 1 day per week, class "J" requires recurring services every other day, and class "P" requires recurring services 5 days per week. Offerors were informed that the major portion of the custodial services would be ordered from the class G, J, and P line items.

Detailed instructions were provided for the preparation of proposals. Among other things, offerors were required to provide a detailed approach to accomplish the specific tasks of the performance work statement. Offerors were also required to provide a staffing plan for all classes of service, which defined the offeror's proposed staffing and labor mix as well as rationale for types and quantities. In addition, the RFP, as amended, provided a range of full-time employees (FTE), excluding management, for classes G, J, and P that the government estimated would be required to perform these efforts. The RFP required the submission of a complete list of all equipment, material, and supplies that would be necessary to perform the contract work, and the offeror's rationale for types and quantities proposed.

The RFP provided a best value basis for award and stated the following evaluation factors and subfactors:

Technical

- a. Specific tasks of performance work statement
- b. Understanding of work statement requirements and instructions
- c. Equipment, supplies, and other materials

¹Our decision is based upon confidential and source selection sensitive information, and is necessarily general.

²Minimum and maximum order quantities were stated.

Management

- a. Staffing
- b. Policies, procedures and objectives
- c. Quality control plan

Price

Performance Risk

The technical and management factors were stated to be of equal weight, and to be together one and one-half times more important than the price and performance risk factors, which were stated to be of equal weight. Offerors were also informed that proposal risk would be an inherent consideration in the evaluation of proposals. In addition, the RFP provided for the go/no-go evaluation of one key person—the offeror's on-site custodial manager.

The Army received 19 proposals, including Hawk's, A-Bear's, and Coast's. During the evaluation of initial proposals, the Army concluded that some offerors did not understand the staffing requirements of the RFP, and, as indicated above, amended the solicitation to state an estimated range of FTEs required for contract performance. Discussions were conducted with all offerors and proposal revisions received. After the proposal revisions were evaluated the competitive range was amended to exclude offers that were determined to have no reasonable chance for award. After further discussions, the remaining offerors, including Hawk, A-Bear's, and Coast, were asked for best and final offers (BAFO). Hawk, A-Bear's, and Coast were each determined to have satisfied the RFP key person requirement, and their BAFOs received the following adjectival ratings:³

PERFORMANCE

<u>PRICE</u>	<u>TECHNICAL</u>	<u>MANAGEMENT</u>	<u>RISK</u>
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³Under the Army's source selection plan, proposals were evaluated as either "outstanding," reflecting that the proposal contained exceptional features that met or exceeded the highest expectations of the government; "very good," reflecting a proposal with clearly excellent attributes or features that would provide results very beneficial to the government; "satisfactory," reflecting a proposal in which there was sufficient confidence that a fully compliant level of performance would be achieved; "poor," reflecting a proposal that demonstrated a lack of understanding of requirements and/or superficial, vague or unsupported approach that represented substantial risk to the government; and "unacceptable," reflecting a proposal that did not meet the solicitation requirements. Performance risk was evaluated as either high, moderate, or low risk.

Coast	\$48.2M ⁴	Outstanding	Very Good	Low
Hawk	\$40.9M	Satisfactory	Poor	Moderate
A-Bear's	\$57.4M	Satisfactory	Satisfactory	Low

Coast's BAFO was the highest rated technically of the competitive range offerors, reflecting the agency's view that Coast's technical proposal offered an outstanding approach containing certain exceptional features. Coast's superior management evaluation factor rating reflected the agency's view that Coast fully supported and explained its proposed manning and labor mix, and provided a very good quality control plan.

A-Bear's satisfactory technical and management evaluation factor ratings reflected the agency's judgment that A-Bear's proposal was adequate and presented an acceptable level of risk, but did not offer the government any exceptional features or attributes that would prove beneficial to the agency so as to offset its significantly higher price.

Hawk's lower-rated BAFO was determined to be acceptable overall, but the agency found that Hawk had not provided adequate rationale to support the equipment and material proposed, as required by the RFP. Hawk's BAFO's poor management evaluation factor rating reflected the agency's judgment that Hawk did not provide more than a minimal rationale for its proposed staffing levels and allocations; that Hawk's proposed staffing levels were inadequate in some respects; and that Hawk's proposed quality control plan demonstrated a lack of understanding of the RFP's quality control requirements. In addition, Hawk, as a newly formed corporation, provided no past or current performance information, and thus presented a moderate performance risk.

The contracting officer concluded that Coast's technically superior proposal offered the best value to the government, although Hawk's lower-rated, acceptable proposal offered the lowest price, because Hawk's proposal presented substantial risks of poor performance while Coast's proposal did not. Specifically, the contracting officer was concerned with Hawk's failure to submit any rationale, despite the agency discussion requests for information, for the types and quantities of equipment, materials, and supplies proposed; in the contracting officer's view, Hawk's failure to provide the required rationale indicated risk to the government that Hawk may not understand the contract requirements. In contrast, Coast provided a detailed analysis and methodology in support of its proposed equipment, materials, and supplies. The contracting officer was also concerned with Hawk's proposed staffing and quality control plans, which the contracting officer concluded

⁴"M" equals a million.

also indicated a lack of understanding of the contract requirements and presented a significant risk of poor performance. The contracting officer had no such concern with Coast's proposal. Finally, Hawk did not provide complete pricing support information, as required by the RFP, and this also raised doubt as to whether Hawk would adequately perform at its proposed price or would provide minimal services in attempt to cut costs. In sum, the contracting officer concluded that:

"[a]lthough Hawk's price proposal is lower than Coast's, Hawk's overall proposal represents substantial risk to the government. Coast's proposal, to include performance risk, provides for a high to very high quality of performance representing little or virtually no risk to the government and this value justifies the additional cost to the [g]overnment that will be incurred by an award to Coast Industries."

Award was made to Coast, and these protests followed.

Hawk protests the Army's selection of Coast's proposal for award, complaining that the agency's cost/technical tradeoff analysis does not establish that Coast's technically superior proposal was worth the associated cost premium.⁵ In a negotiated procurement, the government is not required to make award to the lowest-cost, technically acceptable offeror unless the RFP specifies that cost will be determinative. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Source selection officials have broad discretion to determine the manner and extent to which they will make use of the technical and cost evaluation results in negotiated procurements. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In deciding between competing proposals, cost/technical tradeoffs may be made, the propriety of which turns not on the difference in technical scores or ratings, per se, but on whether the source selection official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme. DynCorp, B-245289.3, July 30, 1992, 93-1 CPD ¶ 69.

Here, the record supports the contracting officer's decision to select Coast's proposal for award on the basis of Coast's evaluated technical superiority, notwithstanding Hawk's lower price. As indicated above, Coast's proposal was evaluated to be much less risky than Hawk's, both from a technical and a price

⁵Hawk initially protested a number of other aspects of the procurement, including the agency's technical evaluation and conduct of discussions. In its report on the protest, the Army responded in detail to each of Hawk's allegations. Hawk in its comments on the agency's report states that it is not protesting the agency's evaluation of proposals; it focuses on the agency's cost/technical tradeoff. We consider Hawk's other protest allegations to have been withdrawn and/or abandoned. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

standpoint. The contracting officer's contemporaneous source selection document details the strengths, weaknesses, and risks underlying the adjectival ratings of each of the offerors' proposals; this document also describes and memorializes the contracting officer's integrated assessment of the proposals and best value analysis. The contracting officer was concerned that Hawk's understaffed approach, poor quality control plan, and unsupported low price presented significant risks of poor contract performance that outweighed Hawk's \$7.3M, or 15 percent, price advantage.⁶ In the contracting officer's judgment, poor contract performance would have an immediate impact on the "health, welfare, and morale of the approximately 6,000 government and 2,704 contract personnel." We find the contracting officer's cost/technical tradeoff analysis to be adequately supported and reasonable.

Hawk argues, however, citing Redstone Technical Servs.; Dynamic Science, Inc., B-259222 et al., Mar. 17, 1995, 95-1 CPD ¶ 181, that the contracting officer's selection decision is unreasonable because it does not specifically show that Coast's higher technical ratings reflected any "meaningful qualitative difference which justified the payments of substantial cost premiums to the higher rated offeror." We disagree. In Redstone Technical Servs.; Dynamic Science, Inc., we found unreasonable a contracting officer's cost/ technical tradeoff that resulted in the selection for award of a higher-rated offeror with a significantly higher cost, where the contracting officer merely relied upon adjectival evaluation ratings without considering whether the relative differences, weaknesses, and risks presented in the offerors' proposals represented any meaningful qualitative differences that warranted the payment of a substantial cost premium. Here, as described above, the Army's contracting officer did consider the evaluation findings underlying the adjectival ratings for Coast's and Hawk's BAFOs, and determined that Coast's technically superior, low risk proposal was worth the associated price premium, when compared to Hawk's much riskier proposal.

A-Bear's protests that it was misled by the Army during discussions because the agency allegedly led the firm to believe that it had to increase its proposed manning levels to be acceptable and this resulted in A-Bear's proposed price being substantially higher than the awardee's. Specifically, A-Bear's argues that its initial

⁶Hawk argues that the contracting officer had actual, personal knowledge of the successful performance of some of Hawk's individual managers when they worked for a different company, and that the contracting officer should have taken the managers' performance record into account in her cost/technical tradeoff evaluation. We disagree. The solicitation did not provide for the technical evaluation of offerors' proposed managers or staff; rather, the RFP provided only for the evaluation of the offeror's past performance. In this regard, the solicitation did not request or require the submission of resumes or past performance information for proposed personnel, other than the on-site custodial manager who was evaluated on a go/no-go basis.

proposal price was lower than Coast's BAFO price, but that it increased its price when it increased its manning levels in response to the agency's repeated questioning regarding its proposed staffing.

Federal Acquisition Regulation § 15.610(c)(2) requires contracting agencies to advise competitive range offerors of proposal deficiencies, weaknesses, or excesses so that offerors are given an opportunity to satisfy the government's requirements. See Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ ___. This obligation is not satisfied by discussions that mislead an offeror. See Lucas Place, Ltd., B-238008; B-238008.2, Apr. 18, 1990, 90-1 CPD ¶ 398. Here, the record shows that the Army's discussions with A-Bear's were not misleading.

As noted above, the RFP required offerors for each class of service to submit staffing plans and supporting rationale, describing the proposed manning levels and labor mix. The Army questioned A-Bear's proposed staffing allocation and levels in its initial proposal for some classes of services; among other things, the Army was concerned that A-Bear's, without explanation, proposed less manning for the performance of class P, which requires the performance of recurring services every day, than for the performance of class J, which requires performance of recurring services every other day. The agency informed A-Bear's that its allocation of personnel to classes of service was inconsistent with the performance requirements within each class of service. Also, the RFP was amended to inform offerors of the government's estimated manning levels for classes G, J, and P. The amendment informed offerors that the government's estimate was "presented only as a guide," and that offerors must provide sufficient rationale for the labor types and quantities proposed for their respective technical approaches; "[r]ationale shall include the offeror's perceived advantage for staffing levels which vary from the aforementioned guidelines."

A-Bear's revised proposal made no revisions to its proposed staffing levels, which were less than the government's stated estimate in the amendment. While A-Bear's provided an explanation as to how A-Bear's calculated its manning allocation regarding the class J and P services, it did not describe the offeror's perceived advantage for varying from the government's manning guidelines, as required by the RFP. A-Bear's revised proposal was nevertheless evaluated as satisfactory under the staffing subfactor, but because A-Bear's staffing level for class P was below the government's estimated range without adequate rationale, the Army informed A-Bear's in the agency's request for BAFOs that:

"A-Bear's has not presented required rationale to include the perceived advantages for staffing levels which vary from the guidelines listed in Amendment 0014 under paragraph 2."

A-Bear's, in its BAFO, increased its manning levels for classes G, J, and P, which resulted in a substantial increase in A-Bear's proposed price. A-Bear's proposed

staffing now exceeded the agency's stated guidelines. A-Bear's stated explanation for its increased manning levels was simply that "we have sound judgements on revising the above categories to submit to Redstone a fair and equitable price on this solicitation."

Contrary to A-Bear's arguments, the record shows that the Army did not inform A-Bear's that the agency found its staffing to be too low, nor did the agency encourage

A-Bear's to increase its proposed staffing. As described above, all of the agency's discussions with A-Bear's concerning that firm's revised proposal focused upon A-Bear's failure to comply with the solicitation's requirement to explain deviations from the agency's stated manning guidelines. There is simply no support in the record for A-Bear's stated belief that the Army's discussions signaled A-Bear's that its manning levels were too low. In sum, we find the Army's conduct of discussions was not misleading.

The protests are denied.

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for Robert P. Murphy
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